IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 271 of 2002

in

SPECIAL CIVIL APPLICATIONNo 9463 of 2001

with

CIVIL APPLICATION NO.3985 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

BUDHESH BHALLABHAI VAGHELA

Appearance:

1. LETTERS PATENT APPEAL No. 271 of 2002

MR HS MUNSHAW for Appellant No.

MS MAMTA R VYAS for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 04/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present Letters Patent Appeal is filed against the order of the learned Single Judge of this Court passed on 22nd January, 2002 in Special Civil Application No.9463/2001, confirming the award passed by the Labour Court, Bhavnagar on 21st October, 2000 in Reference (LCB) No.015/1987 directing the present appellant to reinstate the workman at his original post or in the alternative at any other equivalent post with continuity of service and full backwages. The Labour Court has also awarded the cost of Rs.2,000/-, which was to be paid by the present appellant to the workman.

2) The brief facts giving rise to the present Letters Patent Appeal are as under :

3) That the present respondent-workman was appointed by order dated 13th August, 1986 for the period of 80 days as Boatman on daily wage of Rs.18.30 ps. on several terms and conditions laid down in the said order. The respondent-workman was appointed by another order dated 5th October, 1986 for a further period of 80 days, on several terms and conditions and including a condition that he was provided work purely on temporary ad-hoc and daily wage basis. As the work was available, the respondent-workman was continued through an order dated 20th December, 1986 for a further period of 80 days.

4) Thereafter due to the shortage of water in lake, boating was not possible and respondent-workman was discontinued by an order dated 30th January, 1987 with effect from 1st February, 1987. The said order was challenged by the respondent-workman by way of filing a reference being Reference (LCB) No.915/1987 praying for reinstatement with 100% backwages. The present appellant has filed detailed reply in the said reference, stating that the relief prayed for by the respondent-workman cannot be granted as the respondent-workman has not completed 240 days and there was no violation of the provisions of Section 25 (F) of the Industrial Disputes Act, 1947. It was further contended before the Labour Court that the boating was not possible in the lake due to shortage of water and hence the services of the respondent-workman were discontinued. It was, therefore, contended that the provisions of Section 2 (oo) (bb) of the Industrial Disputes Act, 1947 were attracted. The

Labour Court has passed the order in favour of the respondent-workman, directing the present appellant to reinstate him with continuity of service and 100% backwages.

5) It was this order of the Labour Court, which was challenged by the appellant before this Court in Special Civil Application NO.9463/2001. However, the learned Single Judge of this Court, while dismissing the said writ petition vide his order dated 22-1-2002, held that in view of the fact that the appellant's case being not consistent and that the respondent-workman was being given discriminatory treatment and after his termination other persons have been employed by the appellant, the Labour Court has rightly decided the reference in favour of the respondent-workman. As there being no substance in the petition, the same was rejected by this Court.

6) It is this order of the learned Single Judge, which is challenged by the appellant in the present Letters Patent Appeal under Clause 15 of the Letters Patent.

7) Mr.H.S.Munshaw, learned advocate is appearing for the appellant-Corporation and Ms.Mamta R.Vyas is appearing for respondent No.1. At the time of issuance of notice on 2-7-2002, Mr.Munshaw, learned advocate for appellant has made a statement before the Court that he would make a statement on the question of reinstatement of the workman on the next date after deliberations and instructions from the concerned officer. Thenafter, the matter was adjourned from time to time. However, no such statement was made on behalf of the appellant-Corporation. At the joint request of the learned advocates appearing for respective parties, this appeal is taken up for final hearing at admission stage.

8) Mr.Munshaw has reiterated all his submissions and contentions, which were raised before the Labour Court, as well as before the learned Single Judge of this Court. He has submitted that the respondent-workman has not completed 240 days of service and hence there is no question of violation of Section 25 (F) of the Industrial Disputes Act. He has further submitted that it was one of the conditions of the appointment order that the respondent-workman's service was only temporary and on ad-hoc basis and there was no work so the service would be discontinued in the absence of work. Since there was no boating activity going on, due to shortage of water, the services were discontinued and hence, the provisions

of Section 2(oo) (bb) of the Act were clearly attracted. He has further submitted that the Labour Court has not assigned any reason whatsoever while awarding 100% backwages for the period of more than 14 years. He has further submitted that the Labour Court has mainly based its award on the fact that some other workers working with the respondent-workman were reinstated and the respondent was wrongly left out and hence he was required to be reinstated with 100% backwages. However, the said finding was contrary to the facts and evidence on record as other workmen were employed after more than three years and altogether on different posts, namely, gardener, purely on temporary and ad-hoc basis as they are conversant with the work of the gardener. He has further submitted that none of the workmen was reinstated as boatman and therefore, grievance of the respondent-workman with regard to reinstatement of other workmen and violation of the provisions of Section 25 (H) of the Industrial Disputes Act should not have been held to be tenable. Mr.Munshaw has further submitted that not a single daily wager, junior to the workman, was continued while his termination from the service by an order dated 28th January, 1987 and hence the provisions of Section 25 (G) of the Act were not violated. In this view of the matter, Mr.Munshaw has submitted that neither the Labour Court nor the learned Single Judge of this Court is justified in passing and/or confirming the award.

9) On the other hand, Ms.Mamta R.Vyas, learned advocate appearing for respondent-workman has strongly supported the award passed by the Labour Court. She has further submitted that the finding was arrived at by the Labour Court, after appreciating the facts and evidence on record and hence such a finding cannot be modified and/or reversed, unless it is held to be perverse or unreasonable. She has further submitted that powers of this Court under Article 226 or 227 of the Constitution of India are limited and no case was made out by the appellant-Corporation before learned Single Judge to exercise the said extraordinary powers in favour of the appellant and against the respondent-workman. She has further submitted that the learned Single Judge has rightly rejected Special Civil Application filed by the present appellant under Article 226/227 of the Constitution of India. This Court should not exercise its power under Clause 15 of Letters Patent and the appeal should, therefore, be dismissed with costs.

10) We have heard learned advocates appearing for respective parties. We have also gone through the award

passed by the Labour Court, as well as the learned Single Judge of this Court. As far as reinstatement is concerned, we do not find any infirmity in the order passed by the Labour Court, as well as by learned Single Judge of this Court. The Labour Court has considered several aspects including the completion of 240 days by the respondent-workman, reinstatement of other workmen in service, as well as, new appointments given by the appellant-Corporation after termination of respondent-workman's service and also the violation of provisions contained in Section 25 (F), (G) and (H) of the Act. After considering all these issues, the Labour Court has rightly passed the order of reinstatement and the same was also rightly confirmed by the learned Single Judge of this Court. As far as 100% backwages are concerned, the Labour Court has not assigned any reason in the award nor it was found from the order of the learned Single Judge of this Court as to why the order regarding backwages passed by the Labour Court was just and proper. It is a matter of fact that the appellant is a public body, namely, Bhavnagar Municipal Corporation and the order of termination was passed in the year 1987 and the award was passed by the Labour Court in October, 2000 awarding 100% backwages. In other words, the appellant-Corporation was directed to pay the backwages for more than 13 years. The appellant-Corporation has contended before the Labour Court, as well as before the learned Single Judge of this Court that awarding 100% backwages for the period of more than 14 years without assigning any cogent reasons, would cause burden on the public exchequer. To strike the balance between the parties, the Courts have generally intervened in the order of the Labour Court as far as the backwages are concerned. Having regard to the facts and circumstances of the case and having regard to the nature of the dispute involved in the present matter, we are of the view that the interest of justice would be met if the award of the Labour Court, as confirmed by the learned Single Judge with regard to 100% backwages is modified by directing the appellant-Corporation to pay 50% of backwages to the workman from the date of dismissal order till the date of award. All other directions would remain same.

11) We, therefore, partly allow this appeal with no order as to costs. In view of the order passed in appeal, Civil Application is also disposed of.

(J.N.Bhatt, J.)

(K.A.Puj, J.)

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